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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

LYNCH *v.* O'BRIEN et al.

Sept. 11, 1913.

[79 S. E. 389.]

1. Bills and Notes (§ 301*)—Liability of Indorser—Release.—Where, after the holder of a note, without the consent of an indorser, surrendered certain collateral security, the note was subsequently renewed from time to time, the indorser, who repeatedly renewed his indorsement with knowledge of the facts, waived his defense to the note based on such surrender, and estopped himself to assert such a defense.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 706-721; Dec. Dig. § 301.* 2 Va.-W. Va. Enc. Dig. 481.]

2. Evidence (§ 441*)—Parol Evidence to Vary Writing.—An indorsement of a renewal note could not be varied or contradicted by proof of a contemporaneous parol agreement that the indorser should not be liable thereon, because of the holder's surrender of collateral security pledged for the payment of the original note.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1719, 1723-1763, 1765-1845, 2030-2047; Dec. Dig. § 441.* 10 Va.-W. Va. Enc. Dig. 710; 15 Va.-W. Va. Enc. Dig. 766.]

Appeal from Law and Chancery Court of City of Roanoke.

Suit by J. W. Lynch against E. F. O'Brien and others. Decree for defendants, and plaintiff appeals. Affirmed.

Thos. W. Miller and Jackson & Henson, all of Roanoke, for appellant.

A. E. King, of Roanoke, for appellees.

HONAKER *v.* SHRADER.

Sept. 11, 1913.

[79 S. E. 391.]

1. Appeal and Error (§ 1002*)—Review—Questions of Fact.—In ejectment involving the location of a disputed boundary, the jury's

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

finding on conflicting evidence as to its correct location was conclusive, unless some other valid objection could be shown thereto.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.* 1 Va.-W. Va. Enc. Dig. 621, 14 Va.-W. Va. Enc. Dig. 101; 15 Va.-W. Va. Enc. Dig. 73.]

2. Boundaries (§ 36*)—Evidence—Admissibility.—In ejectment involving the location of plaintiff's eastern line, evidence as to the execution and contents of a lost title bond for land adjoining such line was properly admitted, where it was received only as tending to throw light on the location of the line and not for the purpose of establishing defendant's title to the land in controversy.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 160-162, 164, 166-176; Dec. Dig. § 36.* 2 Va.-W. Va. Enc. Dig. 602; 14 Va.-W. Va. Enc. Dig. 172; 15 Va.-W. Va. Enc. Dig. 140.]

3. Appeal and Error (§ 1057*)—Harmless Error—Admission of Evidence.—In ejectment involving a disputed boundary, the admission of an old survey, if error, was not prejudicial to plaintiff, where the land described therein was clearly identified and located by other evidence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4194-4199, 4205; Dec. Dig. § 1057.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

4. New Trial (§ 161*)—Conditional Refusal.—Where, in ejectment involving a disputed boundary, the declaration in one count sought the recovery of plaintiff's whole tract of land, containing 1,000 acres, and in another count the recovery of the 79-acre tract actually in controversy, and the real issue was understood by the court, the jury, and the parties, but the jury returned a general verdict for defendant, the court properly required defendant to enter a release of that portion of the land outside the tract which was the subject of dispute instead of granting a new trial.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 321-323; Dec. Dig. § 161.* 10 Va.-W. Va. Enc. Dig. 468.]

Error to Circuit Court, Bland County.

Ejectment by one Honaker against one Shrader. Judgment for defendant, and plaintiff brings error. Affirmed.

Williams & Williams and *A. R. Porterfeld*, all of Bland, for plaintiff in error.

Jackson & Henson, of Roanoke, and *Williams & Farrier*, of Pearisburg, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.